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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/804,237

03/19/2004

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MP0031RE

6605

26703 7590 01/09/2009  
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EXAMINER

TRA, ANH QUAN

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/804,237  
Filing Date: March 19, 2004  
Appellant(s): SONG, YONGHUA

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Michael D. Wiggins  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10/24/08 appealing from the Office action mailed 04/17/08.

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**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

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**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Oath/Declaration***

1. The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

2. Claims 1-45, 47-56, 58-68 and 70-72 are rejected as being based upon a defective reissue Oath under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the Oath is set forth in the discussion above in this Office action.

**(10) Response to Argument**

Appellant has not clearly stated that anything that is listed in the declaration is an error. Instead, Appellant just uses the term “potential ambiguity”. As indicated in MPEP 1402, if the error is one of spelling, or grammar, or typographical, editorial or clerical error, it is not grounds for a reissue application. If the “error” can be corrected via Certificate of Correction, it cannot be used as the basis of a reissue application. All the potential ambiguities listed by appellant in the declaration is editorial in nature and correctable via Certificate of Correction. Appellant should clearly and specifically state at least one clear error which makes the patent wholly or partly inoperative or invalid. See MPEP section 1414(II)(C). Under MPEP section 1414(II)(B), it is sufficient when identifying the error, that the declaration “identify” a single word, phrase, or expression in the specification or in an original claim, as long as it indicates how this error renders the original patent “wholly or partly inoperative or invalid.”

As cited by appellant, *In re Altenphohl*, 500 F.2d 1151, held that lack of antecedent basis **can** render a claim invalid under 35 USC 112, 2nd paragraph and thus be an error correctable via reissue. However, lack of antecedent basis does not automatically render a claim invalid under 35 USC 112, 2nd paragraph. In most cases, a 35 USC 112, 2nd paragraph rejection would not be given for a mere lack of antecedent basis. The decision whether the lack of antecedent basis would render a claim invalid under 35 USC 112, 2nd paragraph is a decision for the Director (i.e., examiner) to make and not the appellant. All the potential ambiguities listed by appellant in the declaration appear to be editorial in nature and correctable via Certificate of Correction. Therefore, they cannot be used as the basis of a reissue application.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

**(12) Conclusion**

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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